

State of Colorado



Bill Owens
Governor

Richard Djokic
Director

DPA

Department of Personnel
& Administration

State Personnel Board
The Chancery
1120 Lincoln St., Suite 1420
Denver, Colorado 80203
Phone (303) 764-1472
Fax (303) 894-2147

AGENDA PUBLIC BOARD MEETING November 16, 2004

A public meeting of the State Personnel Board will be held on Tuesday, November 16, 2004, at the Department of Transportation, 4201 East Arkansas Avenue, Second Floor Auditorium, Denver, Colorado 80222. The public meeting will commence at 9:00 a.m.

Reasonable accommodation will be provided **upon request** for persons with disabilities. If you are a person with a disability who requires an accommodation to participate in this meeting, please notify Board staff at 303-764-1472 by November 10, 2004.

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I. REQUESTS FOR RESIDENCY WAIVERS

A. November 1, 2004 Report on Residency Waivers

Reports are informational only; no action is required.

II. PENDING MATTERS

There are no pending matters before the State Personnel Board this month.

III. REVIEW OF INITIAL DECISIONS OR OTHER FINAL ORDERS OF THE ADMINISTRATIVE LAW JUDGES OR THE DIRECTOR ON APPEAL TO THE STATE PERSONNEL BOARD

A. Larry Barron v. Department of Labor and Employment, Office of Field Operations, State Personnel Board case number 2004B088.

On June 10, 2004, the Initial Decision of the Administrative Law Judge (ALJ) was issued. The ALJ found that Respondent's termination of Complainant's employment was arbitrary, capricious or contrary to rule or law and Complainant is entitled to attorney fees and costs. The ALJ ordered that the termination is rescinded, and Respondent is to reinstate Complainant to his former position as a Labor and Employment Specialist I with back pay and benefits to the date of termination.

On July 12, 2004, Respondent filed its appeal of the Initial Decision of the Administrative Law Judge, citing as issues: (1) Whether the ALJ erred as a matter of law in determining that Respondent violated Board Rule R-6-10; and (2) Whether the ALJ erred in

reinstating Complainant to his former position and awarding back pay, benefits, and attorney fees.

On September 17, Respondent filed its Opening Brief, stating the following:

- Complainant was afforded due process when he received a post-termination evidentiary hearing before an ALJ.
- An appointing authority's decision may be reversed only if the action is found to be arbitrary, capricious, or contrary to rule or law. *Lawley v. Department of Higher Education*, 36 P.3d 1239, 1252 (Colo. 2001).
- Where a record exists supporting the decision, a reviewing court must defer to the decision of the administrative agency on matters within its discretion. *National Institute of Nutritional Education v. Meyer*, 855 P.2d 31 (Colo.App. 1993).
- The ALJ found that the appointing authority's action was arbitrary and capricious because she failed to comply with pre-termination rules. *Shumate v. State Personnel Board*, 528 P.2d 404 (Colo.App. 1974).
- State employees may only be discharged for just cause. *Department of Institutions v. Kinchen*, 886 P.2d 700 (Colo. 1994).
- *Oboka v. Department of Human Services*, No. 96CA1584 (NSOP), is factually similar to this case: Oboka was terminated for poor performance, the ALJ found that the appointing authority had made the decision to terminate prior to the pre-termination meeting. The court found that her due process rights had not been violated when the appointing authority prejudged the outcome because she received a post-termination evidentiary hearing before the ALJ. The court denied reinstatement and reversed the award of back pay and attorney fees.
- Here, Complainant never denied that he violated crucial client confidentiality by providing protected information to a former employee, and the ALJ found that this September 26, 2003 incident would have provided a proper basis for considering corrective or disciplinary action.
- When findings of fact justify discipline, the appropriate remedy for procedural flaws should be to remand to the agency to conduct the appropriate process.
- Pre-termination rules were created to implement the employees' due process rights. *Cleveland Board of Education v. Loudermill*, 470 U.S. 532 (1985).
- Violation of pre-termination rules "should not result in the automatic reinstatement and back pay of an employee who committed bad acts."
- Pre-termination rules were intended to provide an initial check against mistaken decisions, not to create a trap for unwary appointing authorities or a welfare check for bad employees.
- Respondent requests that the Board reverse the Initial Decision of the ALJ and deny Complainant's request for reinstatement, back pay, and attorney fees.
- Alternatively, Respondent requests that the Board remand the case to DOLE to provide Complainant with a new R-6-10 meeting before a different appointing authority.

On October 12, 2004, Complainant filed Complainant's Answer Brief, alleging as follows:

- Respondent's failure to strictly comply with Board Rule R-6-10 requirements compels reinstatement of Complainant.
- The crux of the ALJ's ruling was that violation of the terms of a rule issued by an appointing authority requires reinstatement of a certified state employee, even if procedural deficiencies were corrected in a subsequent evidentiary hearing.
- The November 14, 2003 pretermination meeting violated Board Rule R-6-10 because the appointing authority failed to meet with Complainant to present information about the reason for potential discipline and to disclose the source of that information, failed to give Complainant any opportunity to respond to the information regarding the reason for the termination, and failed to exchange information with Complainant.

concerning the reasons for terminating him. *Dept. of Health v. Donahue*, 690 P.2d 243 (Colo. 1984); *Shumate v. State Personnel Board*, 528 P.2d 404 (Colo.App. 1974).

- The employee must be given an opportunity to defend himself before the appointing authority has made a decision and termination is inevitable. In *Shumate*, the Court found that the procedures for dismissal were not strictly followed and deemed the dismissal invalid. In *Donahue*, the Court held that the discharge was in violation of the employee's procedural due process rights.
- Even if the employee had the opportunity to correct the procedural deficiencies in a subsequent evidentiary hearing, the dismissal is invalid and the employee must be reinstated.
- Respondent's alternative remedy of conducting another R-6-10 meeting is not cognizable under Colorado law and is opposed to the rule laid down in *Shumate* and *Donahue*.
- The breach of confidentiality occurred when Complainant pulled information up on his computer screen and informed Hawley that he could not release it, but Hawley walked around the desk to obtain the information nevertheless. Respondent suggests that Complainant should be held wholly responsible for the bad faith acts of another.
- The ALJ found that the action against Complainant was more than "mistaken action"; rather, Respondent was well aware of R-6-10 and the violations of that rule were of an "unusually flagrant nature" and "far more egregious than those in *Shumate*."
- Complainant was terminated without consideration of mitigating information.
- Complainant requests that the Board affirm the Initial Decision of the ALJ, reinstate Complainant with back pay and benefits, and award Complainant his attorney fees and costs.

IV. REVIEW OF PRELIMINARY RECOMMENDATIONS OF THE ADMINISTRATIVE LAW JUDGES OR THE DIRECTOR TO GRANT OR DENY PETITIONS FOR HEARING

- A. Charlotte K. Pacheco v. Department of Corrections, Fremont Correctional Facility, State Personnel Board case number 2004G074.

Complainant petitions the Board to grant a discretionary, evidentiary hearing to review Respondent's adverse grievance decision, denying Complainant's relief requested regarding her request for removal of the corrective action. Complainant argues that she was given verbal permission to take November 28 and 29, 2003, off as her holiday and a vacation day. Complainant states she was further advised that no one needed to trade or cover for her because Lt. Eix said there would be enough people to work the shift.

Complainant contends that on November 30, 2003, Lt. Eix called Complainant into her office with the presence of Sgt. Oyster and proceeded to speak with Complainant in a loud voice, very mad attitude and demeaning manner, saying that she was not given permission to take time off and that Complainant was "pitting her against Lt. Richardson," because Complainant told her that he had in fact given her permission to take time off, and said, "Just because you got mad the [sic] I did not give you permission to take the time off, is no reason for you to not call in and report to work." Further, Complainant alleges Lt. Eix stated, 'I would never mess with Lt. Richardson's schedule.' Complainant contacted Lt. Richardson to discuss the weekend of November 28 and 29, 2003. Lt. Richardson told Complainant that he had enough staff to cover those nights, did not have to keep anyone from swing shift or call anyone in.

On January 12, 2004, Complainant met with Warden Watkins and told him that she was given permission to take the time off. The Warden asked Complainant if she had signed any paperwork requesting the time off. Complainant contends that Lt. Eix had not said anything about Complainant needing to sign paperwork. Warden Watkins advised

Complainant that having been on the job for five months, Complainant should have known a signed request was needed. Complainant requests the corrective action be removed from her personnel records; that the corrective action be taken completely off any and all records and her performance review for the period from November 1, 2003, to January 31, 2004, be changed to a "satisfactory" rating; that Lt. Eix admit she made a mistake and forgot to pass the information regarding the time off to Lt. Richardson; that Lt. Eix apologize to both Lt. Richardson and Complainant; and that Complainant be transferred to another facility, such as PMC or YOS. Complainant notes that she seldom misses work and has taken only one day of vacation. Complainant had approximately 48 hours of vacation leave and more than 30 hours of sick leave at the end of February 2004.

Respondent argues that Complainant failed to report to work without submitting a leave request form or following proper call off procedures, which is a direct violation of both an operational memorandum of FCF and a DOC AR. Complainant's corrective action was not based on the performance evaluation of "Needs Improvement," Complainant did not have the authorization to take off on the nights of November 28 and 29, 2003, nor did she fill out a leave request. Complainant failed to follow proper call off procedures when she failed to arrive to her assigned shift. DOC AR 1450-30 requires an employee to call in four hours in advance of assigned shift.

Respondent further asserts that Complainant does not deny Respondent's policies and procedures mandate submission of a leave request or utilization of proper call off procedures when calling in for a missed shift. Complainant does not deny that she failed to follow those policies and procedures. Respondent argues that Complainant was not given verbal authorization to be absent from work on November 28 and 29, 2003. Respondent further asserts that some of Complainant's relief requested is outside of the Board's statutory authority, namely the performance review for the period of November 1, 2003, to January 31, 2004, be changed to a "satisfactory" rating; that Lt. Eix admit she made a mistake and forgot to pass the information regarding the time off to Lt. Richardson; that Lt. Eix apologize to both Lt. Richardson and Complainant; and that Complainant be transferred to another facility. Board Rule R-8-5 provides that issues concerning "performance evaluation and components that do not result in a corrective or disciplinary action are not grievable or appealable." Respondent requests that the Board deny Complainant's petition for hearing and dismiss her appeal with prejudice.

The ALJ concludes that this case involved miscommunication between the Complainant and her supervisor. Neither had a clear idea of the other's expectations in this situation and both bear responsibility for what occurred. Lt. Eix, as a supervisor, should have made her expectations clear to Complainant; however, Complainant should have asked exactly what procedures governed taking time off. The ALJ finds that corrective actions are intended to bring the employee's attention to an area in need of improvement. Probationary employees do not have a right to be granted a period of time to improve performance, among other things. Board Rule R-4-10. Respondent has provided Complainant with an opportunity to improve and has brought to her attention the fact she needs to take an active role in determining what rules govern her employment at DOC. Complainant failed to proffer sufficient evidence that would support a finding that Respondent's actions were arbitrary, capricious or contrary to rule or law. The ALJ further concludes that the Board has no authority to modify Complainant's performance review.

On October 13, 2004, a Preliminary Recommendation of the Administrative Law Judge was issued, recommending that Complainant's petition for hearing be **denied**.

- B. Sharon Reinsma v. Regents of the University of Colorado, University of Colorado at Colorado Springs, State Personnel Board case number 2003G073.

Complainant petitions the Board to grant a discretionary, evidentiary hearing to review Respondent's termination of Complainant's probationary employment. Complainant argues the decision to terminate her employment was arbitrary because of her disability. Complainant argues her supervisor accused her of not listening, sabotaged her work, supplied her with incomplete instructions, and used offensive, negative body language and facial expressions towards her, which constituted discrimination based on disability.

Complainant contends she made it clear to her co-workers that she was hearing impaired, as she requested to sit in a certain seat for meetings to ensure she was in the best position to hear; her hearing aide acted up, made loud, high pitched noises; and she often asked for information to be repeated. An e-mail/memo was sent on December 4, 2001, from Sue Allison of the UCCS Personnel Department that announced the school's hiring of Complainant as an Accounting Technician III in Accounting, noting Complainant is deaf in one ear. The memo was copied to the Chancellor, Risk Management, Personnel, Telecommunications, Affirmative Action and other offices at UCCS.

Complainant argues that the tone of voice and degrading manner that Complainant's supervisor, Togade, used when speaking with Complainant made for an uncomfortable work environment. Togade would go at least a week without speaking with Complainant and refused to provide eligible written instructions, post it notes or complete typed instructions, on more than one occasion. Togade did not make herself available to Complainant and refused to give her assignments or discuss tasks with her. Complainant argues Togade sabotaged and misrepresented Complainant's work performance, and Togade's refusal to communicate with Complainant interfered with her ability to perform tasks.

Complainant contends Togade would provide Complainant with inaccurate instructions with regard to sorting and distributing financial statements and correcting previous delivery errors. When Complainant would attempt to correct errors, Togade became angry and demanded Complainant quickly and accurately sort statements in a dark room with a case of paper having inferior print quality, which was difficult to read; as a result, Complainant was rated as unsatisfactory in the area of distribution of financial statements. Complainant asserts Togade used discriminatory, degrading remarks in reference to Complainant's hearing ability and wrote in Complainant's October 8, 2002 negative performance review, "You have asked the same questions over and over again." Comments were made by Togade and she continued with other demeaning remarks that were intended to humiliate Complainant; however, Complainant was determined to do a good job, in spite of Togade, and would one way or another obtain information Togade withheld from Complainant.

Complainant contends Togade created a situation that caused Complainant to be in non-compliance with Administrative Procedure P-5-1, leave requests. Togade told Complainant to use lunchtime for medical appointments; after that, she refused to communicate with Complainant. During one of Complainant's absences, Complainant notified co-workers that she was going to work at another UCCS department on UCCS business. Even though Togade was not at work during this time, Togade wrote in Complainant's performance review that she left the office without prior authorization. However, another employee who has no hearing disability could leave her office without permission from Togade and did not receive a negative performance review for the same action. Complainant contends she did not receive additional counseling from Togade; rather, Complainant received degrading treatment from Togade.

Complainant received her 2001-2002 performance pay and disagreed with the performance evaluation. On October 8, 2002, Complainant was provided a twelve-page memo outlining performance deficiencies. Complainant was placed on paid

administrative leave. Complainant was advised by Respondent to prepare for two impartial investigations: one on the way Complainant was treated on the job and another regarding her performance as outlined in the October 8 memo. On October 21, 2002, a memo informed Complainant she would be denied access to her email and computer records. Complainant argues she needed this access in order to have documentation to prove her case. Complainant informed the investigator assigned to review her performance of her access denial and informed the investigator she could not attend the meeting until she had access to her records. The investigator did not agree to the extension of time for Complainant to gather information. Since Complainant was denied access to her records, she asked a co-worker to take the documents to Personnel for safekeeping. However, the Personnel Department has moved twice since then and the documents have disappeared.

Complainant argues UCCS had no valid business reason for dismissing her. A person with a disability must meet the non-medical minimum qualifications for the job, including education, experience, skills, licenses or credentials. Complainant had the necessary skills for the position of AT, as she has a CPA license, and a normal, reasonable person can determine that she was able to do the job. Complainant contends the State of Colorado does not allow discrimination against its employees, citing the Colorado Civil Rights Division opinion, which states, "It is disheartening that an agency of the State of Colorado Government would engage in the issuance of such scathing personal attacks against its employees." Complainant contends Respondent violated Board Rules R-6-6, R-6-11 and R-7-1, in denying her an opportunity to present information to be considered, no good faith effort was made, and though Complainant was hospitalized and made several attempts to reschedule the meeting with the investigator, she was not permitted to reschedule.

Complainant requests a position within the state personnel system where she can be treated with dignity, equal opportunity, and have the potential of a successful career, free of abuse from Togade, reinstatement of lost wages, vacation time used in illness due to abusive treatment from Togade, reinstatement of medical expenses incurred in relation to stress of constant abusive treatment, attorney fees and costs, and a fair and equal chance to be a superior employee of the state personnel system with a normal human being as a supervisor.

Respondent argues that the UCCS acted in accordance with State Personnel Board Rules R-4-9, R-4-10 and R-7-1 and did not act arbitrarily or capriciously towards Complainant. Respondent in no way discriminated against Complainant and has not received sufficient evidence/facts from Complainant to prove she is a disabled person. Respondent was not aware of her disability and Complainant never requested accommodation. Respondent states throughout Complainant's employment at UCCS, there have been constant problems with her performance. Complainant decided not to do work Togade assigned and left the office. While out of the office, she asked the Controller for an assignment and signed up for three training classes in Boulder. Complainant failed to get prior approval to leave the office and attend classes. Complainant also failed to get approval from the department to incur the cost of the training. Regarding job performance, Complainant was reminded to pick up mail because she had allowed it to pile up in the mailroom, and Peoplesoft reports for February 2002 were not sorted and distributed properly. Complainant, after given instructions that no new procedures should be adopted without discussion with her supervisor, sent an email to the campus departments instructing and inviting them to submit chartfield requests for name and campus box changes. Complainant's email was an unauthorized change in the office procedures. Not only did Complainant set up the office to receive complaints, Complainant made the situation worse by calling the departments and making excuses as to why the requests could not be processed.

On October 8, 2002, Respondent told Complainant that projects had been successfully completed over the first ten months of employment did not constitute the major duties and tasks of her job and that Togade was unhappy with her performance and she needed to improve significantly in order to be successful in the position. Respondent asserts it often provided Complainant written instructions through email and that she should have not had problems completing the assignments. However, many projects were incomplete or completed after a deadline, indicating her poor performance was not due to a hearing impairment. On October 17, 2002, an impartial investigator, with an accounting background reviewed Complainant's performance to make an assessment. Complainant agreed to be available for interviews but did not attend the interview for October 23, 2002, though multiple notices were sent. The assessment of the investigator stated that Complainant should easily be able to perform well with a little training given her background. The assessment stated Complainant's frustration with inability to perform simple tasks or retain knowledge from one task to another is noted, as is her inability to perform under time constraints, and based upon the evidence, with the performance evaluation, it recommended that Respondent not certify Complainant in the Accounting Technician III position.

On November 18, 2002, Complainant was informed that her employment was terminated, concurring with the assessment submitted by the investigator and data submitted by supervisors of Complainant, which indicated Complainant's probationary period was unsatisfactory and warranted termination. Respondent argues that Complainant was terminated for poor job performance and not as a result of her disability, which is not a disability as defined by law. Complainant failed to notify Respondent of any alleged disability and failed to request accommodation for her alleged disability. Respondent requests Complainant's petition for hearing be denied and dismissed and Respondent has clearly shown Complainant's employment was terminated for legitimate business reasons.

The ALJ concludes that Complainant has demonstrated she has a disability--a hearing impairment that substantially limits her in the major life activity of hearing. Complainant provided evidence through her exhibits that the hearing aide she uses does not by itself mitigate against the substantial limitation she suffers. Complainant has a record of an impairment as demonstrated in a memo generated upon her hire, which notes that she is deaf in one ear, which was copied to the Chancellor of UCCS, affirmative action and personnel offices, as well as others at UCCS. Complainant has further, demonstrated that she had a hearing impairment and has proffered evidence demonstrating Togade had knowledge of the impairment as of May 2002.

Complainant has also demonstrated she is a qualified person with a disability who is able to perform the essential functions of the job with or without reasonable accommodation. Complainant contends that the only accommodation she sought in order to perform her job was adequate communication from her supervisor, which was denied. Complainant proffered evidence of disparate treatment based on her disability. The ALJ finds that Complainant proffered evidence that disparate treatment was based on her disability and that Togade treated her and others with hearing problems less favorably than those without hearing impairments.

On October 13, 2004, a Preliminary Recommendation of the Administrative Law Judge was issued, recommending Complainant's petition for hearing be **granted**.

- C. William Harris v. Department of Labor and Employment, Labor Market Information, State Personnel Board case number 2004G093.

Complainant petitions the Board to grant a discretionary, evidentiary hearing to review Respondent's denial of his grievance. Complainant argues that the decision of the

appointing authority finding him insubordinate was arbitrary or capricious in that the corrective action was inconsistent with his supervisors' assessment of his performance, inconsistent with the unclear directives in a prior corrective action, and reflects a clear inconsistency in Respondent's application of discipline. Complainant asserts Respondent did not communicate the performance standards to which he is being held to him. Complainant's petition includes assertions of a violation of the State Employee Protection Act (Whistleblower Act) by Respondent.

Complainant, a Statistical Analyst II, is accused of violating Respondent's policy relative to disclosure of ES 202 data. Complainant asserts he did not object to the policy in January 27, 2004; he only asked for clarification concerning conflicting information, including all the stakeholders in the communication since his supervisor had criticized him for not doing so in the past. Complainant's supervisor required him to discuss departmental policy with outside parties since the alleged violation and corrective action, regarding insubordination. Complainant's supervisor had given permission to give actual ES 202 numbers and not trends to OSPB in the past.

Complainant argues the corrective action issued on March 3, 2004, was arbitrary or capricious and further states Complainant's commitment to serve the citizens of Colorado is not in question and that he regularly excels in that area by building and maintaining collegial relationships with LMI/CDLE customers and developing tools to assist customers in the analysis of LMI data. The issuance of the corrective action was arbitrary or capricious since Complainant became the only QCEW analyst who does custom confidential data requests for outside agencies. OSPB contacted Complainant about receiving ES 202 data and the email dated January 27, 2004, was merely to seek clarification for all stakeholders involved. Contrary to comments made the supervisor, it has always been policy to not release early ES 202 data to anyone outside LMI. In the past the practice is to release early data to governmental and non-governmental data users. Respondent decided to issue another corrective action rather than take disciplinary action against Complainant.

Complainant seeks removal of the corrective action dated March 3, 2004, from his personnel file and reimbursement of attorney fees incurred in this matter.

Respondent argues the CDLE employees are required to comply with departmental policies, including the sharing of ES 202 data with external customers. The policy provides that for the release of confidential ES 202 data, the published data must be loaded before it is released to any data user. The purpose of the policy is to make the confidential data available to all users at the same time. When staff from the Governor's Office asks for early or preliminary data, CDLE employees may not give actual employment or wage data, but may give trend information for the quarter.

Respondent issued Complainant a corrective action on August 15, 2002, for an ongoing problem with Complainant's communication and interpersonal skills as they related to Complainant's co-workers, customers and Complainant's supervisor. The basis of the corrective action was Complainant's unwillingness to accept decisions of supervisors and managers, questioning decisions made by the supervisor, and criticizing actions or ideas with internally and externally clients, including emails sent to LMI customers criticizing departmental policies and decisions, which are unacceptable. Whether or not LMI policy is not uniformly applied or known to customers does not provide a basis for Complainant to bring matters to the attention of persons outside CDLE. Respondent asserts Complainant failed to identify a valid issue for hearing and that Respondent did not act arbitrarily or capriciously and request a hearing be denied.

The Director concludes Respondent issued Complainant a corrective action in August 2002 based, in part, on his questioning decisions made by his supervisor and criticizing

actions or ideas of internal and external clients. The corrective action identified Complainant's ability to professionally communicate departmental policies to external customers, as an area for improvement. The corrective action further advised Complainant that any future incidents of the type would not be tolerated and may result in more severe disciplinary action. Respondent concedes its expectations of Complainant could have been clearly articulated in the August 2002 corrective action, and the evidence establishes, at minimum, the expectation that unprofessional communication of CDLE departmental policies with external customers was unacceptable.

Respondent concedes in a letter dated April 5, 2004, that the email of January 27, 2004, did not criticize the CDLE/LMI policy relative to release of early ES 202 data. However, the evidence is clear that Complainant was aware, at least by email, of Respondent's position regarding the early release of ES 202 data, which included an external customer from the Governor's Office in Respondent's policy discussions. Board Rules require that Respondent be accountable for not only assuring compliance with all applicable laws and rules but also for reasonable business decisions, including implementation of policies, when discharging its duties and responsibilities.

The Director concludes it is reasonable for Respondent to require that any disagreements, disputes, conflicts and interpretations of policy, including ES 202 data policy, be addressed and resolved internally without involvement of person(s) outside of CDLE or LMI. Based on the evidence, including Complainant's position in LMI as the only QCEW analyst who complies custom confidential data for external customers, it cannot be said Complainant was aware of a CDLE policy position relative to ES 202 data and its release. Based on the evidence of record, it appears Respondent used reasonable diligence and care in obtaining information regarding conduct relative to the ES 202 data issue, as set forth in the January 27, 2004 email. Respondent gave honest and candid consideration to the information and evidence, including the August 2002 corrective action and its requirements. The Director concludes that it cannot be said reasonable persons would conclude that Complainant should not have received the corrective action on March 3, 2004, under the evidence and circumstances presented. As such, Respondent did not act arbitrarily or capriciously in this matter.

On October 18, 2004, a Preliminary Recommendation of the Director was issued, recommending that Complainant's petition for hearing be **denied**.

V. INITIAL DECISIONS OR OTHER FINAL ORDERS OF THE ADMINISTRATIVE LAW JUDGES OR THE DIRECTOR

A. Kenneth Schuller v. Department of Personnel and Administration, Division of Central Services, State Personnel Board case number 2004B093 (November 3, 2004).

Complainant appealed his layoff, including the determination of his retention rights, and sought reinstatement, back pay, benefits, attorney fees, and costs. After hearing, the ALJ determined that the appointing authority's action was not arbitrary, capricious, or contrary to rule or law. The ALJ found that the choices made by Respondent, while having a severe impact on Complainant, were not unreasonable or beyond the pale; rather, they were choices made in the context of a long history of losses, a state statute mandating costs be covered by the rates charged and the non-production nature of Complainant's position, and those choices were made after consideration of a wide range of facts. While the parties stipulated to consideration of the Complainant's retention rights for five positions, the ALJ found that Complainant did not meet the minimum and/or special entry requirements, including education and experience, for those five General Professional positions and that the agency properly assessed his past experience and job duties. Affirming Respondent's action, the ALJ did not award attorney fees and costs.

[The deadline for appealing the Initial Decision of the Administrative Law Judge is December 3, 2004.]

VI. REVIEW OF THE MINUTES FROM THE OCTOBER 19, 2004 PUBLIC MEETING OF THE STATE PERSONNEL BOARD

VII. ACKNOWLEDGMENTS

DECISIONS OF THE STATE PERSONNEL BOARD MADE AT ITS OCTOBER 19, 2004 PUBLIC MEETING:

- A. James Masse v. Department of Corrections, State Personnel Board case number 2003B077.

The Board voted to adopt the Amended Initial Decision of the Administrative Law Judge and ordered the Amended Initial Decision of the Administrative Law Judge is adopted and made an Order of the Board.

- B. Jeanette Aragon v. Department of Corrections, San Carlos Correctional Facility, State Personnel Board case number 2003B223.

The Board voted to adopt the Order Denying Motions for Attorney Fees and Costs, Vacating June 1, 2004 Hearing and Dismissing Appeal of the Administrative Law Judge and made the order an Order of the Board.

- C. Barbara Schwartz v. Department of Corrections, State Personnel Board case number 2004G048.

The Board voted to adopt the Preliminary Recommendation of the Director and deny the petition for hearing.

- D. Melonie Y. Wilson v. Regents of the University of Colorado, University of Colorado at Colorado Springs and University of Colorado at Boulder, State Personnel Board case number 2003G074.

The Board voted to adopt the Preliminary Recommendation of the Administrative Law Judge and deny the petition for hearing.

- E. Don Vadasy v. Department of Transportation, State Personnel Board case number 2004G072.

The Board voted to adopt the Preliminary Recommendation of the Administrative Law Judge and deny the petition for hearing.

- F. Richard Sickles v. Department of Public Health and Environment, State Personnel Board case number 2004G059.

The Board voted to adopt the Preliminary Recommendation of the Administrative Law Judge and deny the petition for hearing.

VIII. REPORT OF THE STATE PERSONNEL DIRECTOR

IX. ADMINISTRATIVE MATTERS & COMMENTS

- A. ADMINISTRATIVE MATTERS

- Cases on Appeal to the Board and to Appellate Courts

B. OTHER BOARD BUSINESS

C. GENERAL COMMENTS FROM ATTORNEYS, EMPLOYEE ORGANIZATIONS,
PERSONNEL ADMINISTRATORS, AND THE PUBLIC

X. EXECUTIVE SESSION

A. Case Status Report

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NEXT REGULARLY SCHEDULED BOARD MEETINGS - 9:00 a.m.

December 21, 2004	Colorado Department of Transportation 4201 East Arkansas Ave., Second Floor Auditorium Denver, CO 80222
January 18, 2005	Colorado Department of Transportation 4201 East Arkansas Ave., Second Floor Auditorium Denver, CO 80222
February 15, 2005	Colorado Department of Transportation 4201 East Arkansas Ave., Second Floor Auditorium Denver, CO 80222
March 15, 2005	Colorado Department of Transportation 4201 East Arkansas Ave., Second Floor Auditorium Denver, CO 80222
April 19, 2005	Colorado Department of Transportation 4201 East Arkansas Ave., Second Floor Auditorium Denver, CO 80222
May 17, 2005	Colorado Department of Transportation 4201 East Arkansas Ave., Second Floor Auditorium Denver, CO 80222
June 21, 2005	Colorado Department of Transportation 4201 East Arkansas Ave., Second Floor Auditorium Denver, CO 80222